



July 18, 2000

Mr. Dan T. Saluri
Assistant City Attorney
City Of Lubbock
P O Box 2000
Lubbock, Texas 79457

OR2000-2701

Dear Mr. Saluri:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137095.

The City of Lubbock Police Department (the "department") received a request for "the personnel file" of a named individual, a former police officer with the department, as well as "any other information whatsoever" relating to the named individual. You state that the civil service commission director has provided to the requestor a copy of the personnel file maintained by the director. You have provided for our review information that is responsive to the request, which you indicate consists of a personnel file maintained by the department. You assert that this information is excepted from disclosure under sections 552.101, 552.114, 552.115, 552.117, and 552.119 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

You aver that the information you have submitted for our review is excepted from disclosure in its entirety by section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code applies to civil service cities and contemplates two different types of personnel files, one that the civil service director or the director's designee is required to maintain as part of the police officer's civil service file (the "(a)" file), and one that the department may, but is not required to, maintain for its own internal use (the "(g)" file). Local Gov't Code § 143.089(a), (g). You state that the City of Lubbock "has established a civil service system in accordance with

the civil service law, which was adopted by the qualified city voters on December 2, 1947.” We thus understand that the City of Lubbock is a civil service city.

The (a) file must contain certain specified items, including documents relating to any misconduct in those cases where the department took disciplinary action against the officer, and any periodic evaluation of the officer by a superior. *Id.* § 143.089(a)(2), (3). However, documents relating to any alleged misconduct or disciplinary action taken must be removed from the (a) file if the department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *Id.* § 143.089(b), (c). Thus, subsections (a)-(c) limit the contents of the (a) file. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director’s designee a person or agency that requests information that is maintained in the fire fighter’s or police officer’s personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer’s personnel file maintained by the city police department for its use (a (g) file), and the court addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. As indicated above, however, in cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel file maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). We note the legislative purpose of section 143.089 as stated by the *City of San Antonio* court:

All parts of section 143.089 are quite obviously designed to work in harmony with each other and in harmony with the disclosure provisions of the [Public Information] Act under the general legislative policy that allegations of misconduct made against a police officer shall not be subject to compelled disclosure under the Act unless they have been substantiated and resulted in disciplinary action.

851 S.W.2d at 949. Your representations as to the submitted documents indicate that they are from the (g) file maintained by the department for its internal use. We therefore agree that the submitted documents are confidential and must be withheld. We note, however, that the submitted records contain documentation of disciplinary action taken against the officer, as well as periodic performance evaluations of the officer. As stated above, section 143.089(a)(2) requires that such records be placed in the (a) file. Further, such records are not excepted from required disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. Accordingly, we assume that the records relating to disciplinary action against the named individual, as well as the performance evaluations of the named individual, constitute information that was also included in the (a) file and that such information has been released to the requestor. Based on this assumption and on your representations, we further conclude that the submitted documents, in their entirety, must be withheld from the requestor because they are confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Because we resolve the matter under section 552.101, we do not address the other exceptions you have asserted. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

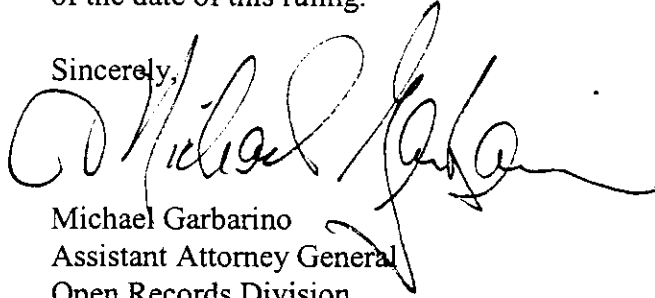
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over the word "Sincerely,".

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137095

Encl. Submitted documents

cc: Mr. Brian E. Murray
P O Drawer 1469
Lubbock, Texas 79408
(w/o enclosures)